(1)

89-1803

No. ....

In the Supreme Court

OF THE

United States

October Term, 1989

MICHAEL SCHAEFER,
Petitioner,
vs.
MARJORIE GALLEGO, Individually and on behalf of Suzanne Norman, Diane Price, Anna Uceda, and all others similarly situated; Wilford D. Willis, Trustee of the Estate of Michael Schaefer,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, 2nd DISTRICT, OF THE STATE OF CALIFORNIA

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QUESTIONS PRESENTED

1. Whether 'bulls-eye' composition of jury panels with "neighborhood" limited summoning is consistent with civil litigant's Sixth and Seventh Amendment rights.

2. Whether Due Process acts as a check on undue jury discretion to award punitive damages in absence of any statutory limit; could an award of 40% to 100% of defendant net worth be affirmed?

3. Whether certification of a 'class' by sanction order is consistent with class-defendant's right to evidentiary evaluation and Fourteenth Amendment due process and equal protection rights; at what stage is "numerosity" beyond challenge; is a residence one "tenancy" for numerosity determination?

4. Whether multiple and successive prosecutions civilly and criminally involving same defendant and same factual setting are tolerable in light of Fourteenth Amendment due process and equal protection protections; when is enough enough.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, 2nd DISTRICT, OF THE STATE OF CALIFORNIA

OPINION BELOW

The Court of Appeal, 2nd Appellate District, affirmed jury verdict of $1,850,538.42 in a 16 page unpublished opinion set forth in Appendix. Rehearing was denied by said court, and on February 14, 1990 the Supreme Court of California denied petition for review. (Jury verdict included in Appendix)

JURISDICTION

The judgment of the Court of Appeal, 2nd Appellate District of California, was entered on November 17, 1989. A timely petition for rehearing was denied on December

13, 1989. A timely petition for review by the Supreme Court of California was denied In Bank February 14, 1990. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. sec. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Sixth Amendment
Seventh Amendment
Fourteenth Amendment

STATEMENT OF THE CASE

A dispute arose between Los Angeles, California tenants and San Diego, California landlord, as to conditions of a 61 unit apartment house in Los Angeles, Calif. Following sale of the premises in August, 1981, the tenants commenced a $100 million class action seeking civil remedies including refund of rent, damages for emotional distress, and punitive sanctions.

The Los Angeles attorney retained by the landlord, Michael Schaefer, petitioner herein, abandoned the case at crucial moments without notice to his client. The trial court, as a matter of sanction for failure to provide further response to interrogatories, certified the "class" and made numerous findings from which landlord never recovered.

Schaefer had been prosecuted by the City of Los Angeles as to the building conditions, and sentenced to jail and to monetary fines. City of Los Angeles sued Schaefer for civil penalties involving the same property and time frame, and recovered $64,000. Schaefer was sued by tenant Jose and Maria Camacho, during the same time frame (January to August, 1981), recovering some $35,000 in civil judgment, in 1985, then returning as

witnesses in 1986 Class Action trial and recovering substantial damages for their minor children. Schaefer was sued by tenant Martha Ceja, using the name of a fellow tenant Julia Orellana (Ceja not having social security number or legal residence), for personal injuries, and continued to seek Class benefits. And the Class itself, consisting of a maximum of ten tenant families who have surfaced over 6 years of litigation, recovered $1,850,538.42, which today is estimated to be $2.6 million with interest accruals.

The apartment house was plagued by gang-member terrorism, two killings in 1981, vandalism destroying any efforts to repair, with the result that the premises were legally uninhabitable during much of the time period in question, notwithstanding that most of the apartments continued to provide housing to hispanic families and friends. (Teenage son of Respondent Gallego was identified by police witness as one who vandalized premises, and as a gang member.)

A jury composed of residents residing close to the Courthouse, rather than at random within the 20 mile radius dictated by California law, rendered verdict in April, 1986 for $230,000 in compensatory damages for emotional distress and rental refund, and $1,600,000 in punitive damages.

The Court in the case brought by Jose and Maria Camacho made a 1985 finding as to landlord's net worth as being $1,600,000 and such litigation was judicially noticed by parties and the Court in the Class trial. There was no finding as to net worth in trial of the instant case, the Class case, but inferences arose from landlord's 1986 estimate of his net worth at $3,000,000 and speculation by Class counsel that it might be the $5,100,000 aggregate value of all properties owned (but without deduction for

numerous senior and junior mortgages encumbering said assets). The jury, without making any finding as to net worth, resolved same by award of $1,600,000. Landlord, unable to secure said judgment, has been in Chapter 11 bankruptcy during the course of these proceedings and remains such a debtor today.

The Estate of John Michael Schaefer, subject to jurisdiction of the U.S. Bankruptcy Court, Southern District of California, Case No. 87-05174-LM11, is administered by Wilford D. Willis, Esq., Trustee. Said Trustee has admitted that the Estate has a residuary of at least $1,000,000 that may be returned to debtor at conclusion of the Chapter proceeding; said Trustee enjoys right to represent the Estate for purposes of litigation pursuant to federal law. Petitioner Schaefer comes to this Court on behalf of the Residuary Interest of said Estate (a position not at all inconsistent with the Trustee's interest, which is providing 100% protection for creditors, creditors consisting largely, more than 95%, of the *Class judgment*).

Trustee and Class Counsel agreed on October 16, 1989 to compromise this action for $1,200,000. The Court of Appeal affirmed judgment for $1,850,538.42 on November 17, 1989. Because of the immediacy of the $1,200,000 and uncertainty of treatment by additional reviewing courts, all parties supported said settlement in full hearing before the U.S. Bankruptcy Court, which on November 31, 1989, two weeks following action of Court of Appeal, issued its order approving same. No rehearing or appeal was taken from said order. Settlement is also subject to state court approval. The State Court on April 23, 1990 rejected said compromise, ordering parties to renegotiate; Trustee has now contracted for settlement

at $1,950,000 and indicated auction of the Estate's assets to raise the additional cash.

Because of the uncertainty, however remote, as to State Court approval of the new $1,950,000 at hearing set for May 30, 1990, Trustee has disclosed that he may be filing a Petition for Certiorari on behalf of the Estate. Said Trustee has been granted 60 days extension of time, but is not expected to file Petition if both State and Federal Courts approve the revised $1,950,000. The U.S. Bankruptcy Court has set expedited hearing for June 5, 1990.

Petitioner Schaefer filed a petition for writ of mandate in the Court of Appeal, 2nd Appellate District, to compel the State Court to reverse its rejection of the $1,200,000 settlement, to approve said settlement and order that the Estate pay same within 30 days. Schaefer sought a Stay of further state court proceedings in the trial court, denied, and in the Court of Appeal, 2nd District, until resolution of legal arguments as to policy of the law favoring compromise and total lack of "changed circumstances" between the November 31, 1989 U.S. Bankruptcy Court hearing and State Court proceedings seeking approval. The Court of Appeal denied both petition and stay on May 14, 1990. Petitioner is seeking a Stay from this Court, so that the May 30, 1990 and June 5, 1990 hearings will not be allowed to frustrate evaluation of the issues by this Court.

Petitioner Schaefer is required to have permission of Trustee to assert any position, and lacking same, leave of U.S. Bankruptcy Court. Trustee has denied permission for this Petition to be filed, and emergency application for judicial leave, some two weeks ago, had not been responded to by the Bankruptcy Court. The inherent financial interest of Schaefer family as Residuary 'heirs' to this Estate, in amount estimated to be at least $1,000,000,

is basis of cognizable interest herein regardless of efforts by Trustee, in his protection of creditor interests, to prevent any judicial petition not of his chosing or approval. Trustee has threatened petitioner with contempt proceedings for filing this petition.

CONCLUSIONS

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeal of California, 2nd Appellate District, with potential for remand of the cause for retrial by jury drawn from a population consistent with applicable statutes, in an appropriate court, on behalf of decertified individual aggrieved tenancies; or alternatively, to remand for evidentiary determination of petitioners net worth with guidance as to quantum of award; or alternatively, to reverse judgment entirely under traditional concepts of res judicata and collateral estoppel, tenants having had opportunity to join-in *People v. Schaefer* civil action addressing the same premises and time frame.

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Sidebar: Regardless of the Court's disposition of Petition, petitioner prays for a determination of the propriety of his having come to this Court.

REASONS FOR GRANTING THE WRIT

1. Decision below exposes civil litigants throughout America to tainted and biased jury panels.

The Sixth Amendment assures to the accused in criminal prosecutions a trial "by an impartial jury of the State and district, which district shall have been previously ascertained by law". The Seventh Amendment speaks to civil litigation, assuring right to trial by jury. The nature of the jury must be read in the same light for each Amendment.

Taylor v. Louisiana, 419 US 522, (1975), provides that "the Sixth Amendment requires that the jury pool be drawn from a representative cross-section of the community".

California Code of Civil Procedure, section 203, provides that "the persons solicited shall be fairly representative of the population in the area served by the Court" and defines this further, "no juror shall be required to serve at a distance greater than 20 miles from his or her residence".

As to downtown area apartment properties, the central city Superior Court has jurisdiction. The 20-mile radius would appear to assure any litigant the possibility and probability of having jurors appear on his prospective panel who are residents of numerous middle and upper class residential area, including Los Feliz, San Fernando Valley, Beverly Hills, Hollywood Hills, all within 20 miles of the Court. However, *without disclosure* to litigants, the Jury Commissioner, in an effort to save juror travel mileage costs (which civil litigants pay anyhow!) summons jurors to attend trial only at the courthouse closest to their residence. This assures that a lower-income, tenant-biased and landlord-antagonistic, population will

appear as the population from which litigants in the downtown Court must select their "cross section of the community", to comprise an "impartial jury of the State and district as previously ascertained by law". And results, such as the multi-million judgment against a single building owner, in favor of tenants who demonstrated no injury of any nature other than emotional distress and who sought satisfaction in busting the landlord so as to send-a-message. No wonder *National Enquirer* found the trial worthy of full page coverage with headlines screaming "TENANTS GET REVENGE".

The State Court assumed and held that a federal question is properly before it and proceeded to consider and dispose of that issue, thus dissolving this Court's concern for proper raising of the federal question. *Whitney v. California,* 274 US 357, 360-61, *Manhattan Life Ins. Co. v. Cohen,* 234 US 123, 134; *Coleman v. Alabama,* 377 US 129, 133. At page 14 of the State Court opinion, it rejects the argument because it was not raised in the trial court, and for failure to document exclusion from jury service of a cognizable, distinctive group, or the underrepresentation of such a group. The court notes that the California Supreme Court in *Williams v. Superior Court,* (1989) 49 Cal.3d 736, rejected the notion that the 'community' was the 20-mile radius. Brief of Wilford D. Willis, Trustee, argued that the "Bull's Eye" method of summoning jurors only to the closest-courthouse "denied defendant a fairly representative jury and violates the guarantees of the Sixth and Seventh Amendments of the U.S. Constitution".

Failure to raise the issue at the trial court level is warranted where a pure question of law arises, and the secret policy of the Los Angeles Jury Commissioner (no longer secret) is constitutionally intolerable, regardless

of factual showing of under-representation or exclusion, *absent disclosure to litigants.* Litigants and their counsel have every right to assume that the laws of the jurisdiction are being carried out by appointed administrators, such as the jury commissioner, and for this judicial officer to fashion his own notions on what should constitute a panel of prospects, in a quest to save the public money in criminal litigation (and for whatever unknown or nonexistant reason in civil litigation), without disclosing same, may not be criminal but it is certainly a disaster to trusting litigants who depend on the proper functioning of the Office.

This Court has held that whatever jeopardizes for a moment the integrity of a trial by a jury ought to be strictly scrutinized and condemned. *Webster v. Reid,* (1850) 52 US 437.

This is a significant error in these proceedings and involves considerations affecting large numbers of citizens. While ordinarily this Court does not take note of errors not properly raised, that rule is not without exception. *Silber v. US,* (1962) 370 US 717. As to matters of a nonjurisdictional nature, questions of significant importance and public concern have been considered. *U.S. v. Western P.R. Co.,* (1956) 352 US 59, *Banco National de Cuba v. Sabbatino,* (1964) 376 US 398; *Schlesinger v. Councilman,* (1975) 420 US 738.

Specifically, as to the propriety of trier of fact (such as jury in instant case), the status of a Judge sitting in federal appellate court having also sat as federal trial judge was reviewed in *William Cramp & Sons Ship & Engine Bldg. Co. v. International Curtiss Marine Turbine Co.,* (1913) 228 US 645, no objection having been made as to the Judge's participation. The Jury Commission's practices were not known to counsel in the instant case.

Perhaps a Miranda-like warning ought be given to litigants in jury trials, prior to enpanelment, as to any deviation in summoning of veniremen from the general requirements of California law, with parties having opportunity to so stipulate, or to challenge the practice as it affects them.

Williams involved a black defendant and a largely nonblack venire panel, and assertion of a right to have the case tried by a panel drawn from the area where the alleged crime took place. It may be easier to draw distinctions from economic levels, in a case involving economic interests, such as landlords and tenants, than to determine distinctions between citizens of differing races. Given the opportunity, petitioner would have documented economic differences between "close in" populations, "20-mile" populations and the County at large. Williams held that "in California the right to trial by Jury drawn from a representative cross-section of the community is guaranteed equally and independently by Sixth Amendment and by California Constitution Article I.

In *Thiel v. So. Pacific Co.,* (1946) 328 US 217, this court held that states could not systematically exclude economic groups from jury service. But that's just what the Los Angeles Jury Commissioner is doing by programming the computer to summon only 'neighbors' to the downtown Court. Absent selective new high-rise condo developments, the vast majority of close-in urban populations are below the median of any community's economic posture. The flight to the suburbs is part of history that parallels progress in transportation and development of fringe areas.

In *Williams,* a strong dissent by Justice Broussard with concurrence by Justice Mosk cautioned that the court has an obligation to consider the practical consequences of its

decision. That none of the decisions cited showed an economic bias, or that such ever was a concern in California. None show any sensitivity for the wealthier defendant facing trial before a predominately low economic status jury. To the contrary, the decisions simply seem to assume that judges, juries, jury commissioners and prosecutors lack any feelings as to economic bias. The decisions even erect *procedural barriers* to make it difficult or impossible to prove subtle forms of bias. And they dismantle, step by step, legal doctrines which have been created over the years to make the right to a representative jury an effective and enforceable right.

In the instant case, the "bullseye" and "neighborhood" programming of computers containing County residents is a practice that has no place in civil litigation, where the costs fall upon the litigants and not the public, and it undermines defendant's right and the community's right to a truly representative jury. Any deviation from what the law compels must be by stipulation or judicial order with opportunity to challenge.

In *Williams,* at page 739-40, the Jury Commissioner discloses that although an eligible juror may be assigned to virtually any superior or municipal court in the county, the computer program assigns the juror to the court nearest the juror's residence. If the court is more than 20 miles from his residence, juror is informed of right to be excused. (It is not known if a juror has ever been so-assigned).

In *People v. McDonald* (1987) 191 Cal.App. 3d 569, a California appellate court held that "a party is constitutionally entitled to a jury that is as-near an approximation of ideal cross-section of the community as process of random draw permits." Is the jury commissioner tamper-

ing with litigants reasonable expectations and Fourteenth Amendment rights?

The Sixth Amendment does guarantee to every defendant regardless of personal characteristic a jury drawn from a venire from which no member of the local community has arbitrarily or unnecessarily excluded. *O'Hare v. Superior Court,* (1987) 43 Cal.3d 86, 729 P.2d 766. If the Los Angeles population includes suburban residents, the surreptitious practice of the Jury Commissioner does arbitrarily and unnecessarily exclude these citizens from any call to go downtown.

In *Aetna Life Insurance Co. v. Lavoie* (1986), 475 U.S. 813, the Court sustained litigants raising the issue "as soon as it discovered the facts" (relating to Justice Embry's personal litigation not known until after the Supreme Court of Alabama issued its opinion).

The issue was raised at the first opportunity; when the surreptitious practice became publicly disclosed with the filing of the *Williams* case. And it is ripe for this Court's ear and eye. The remedy is natural. Remand the case for retrial, on behalf of those litigants who actually exist, severally, with opportunity to enpanel a jury from veniremen summoned in a manner consistent with the laws of the jurisdiction. (Retrial may be in U.S. Bankruptcy Court because of petitioner's personal jurisdiction as a debtor there.)

2. Decision below sanctions punitive damages award equal to 100% of only judicial finding of defendant net worth and violation of Due Process check on runaway jury discretion.

While the constitutionality of punitive damages in general was not raised at the trial court level, and the prayer for punitive damages did exist there, the specific award

did not arise until April 26, 1986 when the jury announced its 'lottery' winnings.

The first opportunity to question a specific award was post-trial. And for the reasons noted in *Whitney, Manhattan Life* and *Coleman,* supra, this Court may have no concern for transcript citation.

At Reporters Transcript page 7, line 14-15, the Court in chambers agreed to take judicial notice of others actions involving Michael Schaefer. A significant action was *Camacho v. Schaefer,* 193 CA3d 718, 722; 238 Cal.Rptr.609, wherein the Court found, in 1985, that "appellant's net worth was shown to be approximately $1,600,000".

Is it coincidental that the jury awarded $1,600,000 in punitive damages in the instant case?

There is no evidentiary finding of net worth during course of the 1986 trial. There is evidence that total assets, set forth on blow-ups, totalled $5,100,000, with no mention of numerous mortgages on the various apartment investments, something that a sophisticated juror might question but a jury unfamiliar with real estate financing might not. The punitive award ranges from 32% of the 'assets' suggested as being some sort of net worth, to 100% of prior judicial finding of net worth. This intolerable and ruinous finding cries out for rectification or remand for evidentiary finding.

Without finding 'profitability', the California appellate court affirmed the punitive award as being left to discretion of the jury and trial court on motion for new trial, citing reprehensible nature of Schaefer's conduct and its profitability, and that it does not suggest passion and prejudice. The court in oral argument considered "disgourgement of profits" as a criteria but did not include

that in its Opinion. There was no evidence of any operating profit over 4 years ownership but 1981 sale (with 4% down payment) reflected a price $635,000 in excess of 1977 cost (with 20% down).

Trustee's brief to said Court argued that the punitive award was unconstitutional as (a) violation of Amercements Clause of the Eighth Amendment, (b) violation of Excessive Fines Clause, (c) violation of due process of law and equal protection of Fourteenth Amendment, and the appellate court responded that this position 'has been consistently rejected by our highest court", citing two California Supreme Court opinions and *Browning Ferris Industries of Vermont, Inc. v. Kelco Disposal Inc.* (1989) 492 U.S. ____.

California appellate courts have stated that "the punitive damage award is so greatly disproportionate to net worth that it is presumptively based upon passion or prejudice", in Merlo v. Standard Life & Accident Ins. Co., 59 Cal.App.3d 5 (1976), rejecting a $500,000 punitive award as to a corporation worth $1,607,721. Cases have rejected punitive awards exceeding 25% of a defendant's net worth "unless it is necessary to destroy defendant as well as to punish him". The California courts have also concluded that an award equal to 15% of net worth of defendant 'is so excessive and grossly disportionate to wealth of defendant and to compensatory damages award that it is suggestive of passion and prejudice'. *Little v. Stuyvesant Life Ins. Co.,* 1977, Cal.App.3d 451, 469-70. The highest punitive award actually confirmed by a California appellate court was $5,000,000 in *Downey Savings & Loan Assn. v. Ohio Casualty Inc. Co.,* 189 Cal.App.3d 1072 (1987) and that sum was less than 2% of defendant net worth. There is compelling need for national criteria.

3. Decision below encourages nonevidentiary certification of "class litigation" by way of sanctions. Inconsistent adjudications.

We are dealing with a 61 unit apartment building that was for the most-part rented. How many tenants are there? How many tenancy-contracts? How many legally individual and distinct contracts? *Kinney v. Vaccari,* 27 Cal.3d 348, 165 Cal.Rptr. 7887 (1980), held that the word "tenant" was correctly constructed to refer to "all the occupants of a rental unit and not to each individual". Opinion by Justice Stanley Mosk, 5 Justices concurring.

There are many decisions throughout America, including the instant case, that deem each person occupying the premises to have a legally cognizable 'tenancy' regardless of the fact that all-occupants are dealt with as a single unit of tenancy by all contracts, all landlord-tenant relationships.

"Tenant" is defined "as one renting land and paying for it". *Wilcox & Co. v. Deines,* 119 Nebr. 692, 230 NW 682, 684. One who hires rooms in a building is considered a "tenant" if he has exclusive possession and control. *Johnson v. Kolibas,* 75 N.J. Super. 56, 182 A2d 157. Spouse and children have no exclusive possession and control, only the family, be it a single person, a couple, or a group of related or unrelated occupants, constitutes an entity having "exclusive possession and control".

Joint occupancy of rent-controlled apartment by tenant's sister, who signed lease as "tenant", was not sufficient for a renewal lease, neither lease nor any law constituted her a "tenant". *Sullivan v. Brevard Assoc.,* 66 NY 2d 489, 488 NE 2d 1208. "Tenant" is person named in the lease and paying rent, even when other family members are in residence. *Belmont East Co. v. Abrams,* 473

NYS 2d 676, 679; 123 Misc. 2nd 404. The wife of a leaseholder was not a 'tenant' within statute governing voluntary agreement to rent ceiling increase, and could not sign agreements as leaseholders agent, absent express authority. Tenants of *1460 Euclid St. N.W. v. District of Columbia,* DC App., 502 A2d 470, 472.

A class action can be decertified at any time, even after trial of the cause. Certification of a class action is conditional, always subject to decertification. *Starrides v. Mellon National Bank,* WD Pa.1975, 69 FRD 424,430.

Trial court retains jurisdiction to decertify a class even after a decision on the merits, *Grooan-Beall v. Ferdinan-Roten Galleries,* 1982, 133 Cal.App.3d 969. *Taylor vs. Safeway Stores,* (CA-10) 1975. 524 F2d 263, 269.

Petitioner has challenged the numerosity status of this phony "class" ever since learning of the April 12, 1983 sanctions order of the trial court, made without actual notice to petitioner and without opposition of appearance by petitioner's then retained counsel, establishing that: (1) The class is ascertainable and manageable, (2) The named plaintiffs are suitable representations and able fairly and adequately to represent interests of Class, (3) Class action is superior to other available methods for fair and efficient adjudication of the controversy, (4) The action should proceed as a class action, (5) Defendant's building was uninhabitable, (6) The members of the class did not cause the uninhabilitable condition of said building. (Please see minute order in Appendix.)

Since petitioner did not learn of the disaster until 9 months post-hearing, and motions to set aside are mandated to be filed within 6 months of a judgment, petitioner has never been able to obtain inquiry into propriety of the Class. The issue was raised again at trial,

and post-trial. A March 16, 1986 Shaefer motion in limine asserted due process Fourteenth Amendment violation by maintaining class absent numerosity, but more importantly, defendants inability to confront hypothetical plaintiffs. "Plaintiffs have over a period of almost four years found no more than ten tenants contrasted with imagined figure of 100". See note, R.T. p.7, line 8, Chambers conference. The consequences are too draconian to escape this Court's inquiry.

Appellate document 300, Supplemental Points & Authorities, evidences March 12, 1984 Fourteenth Amendment challenge to certification, denied, two years before trial. Schaefer cited Caryl Richards, citing *Caryl Richards, Inc. v. Superior Court, 188 CA2d 300, for premises that "recalcitrant party is denied due process of law if sanction denies party right to defend evidence or present evidence on issue of fact unaffected by discovery.* (That issue of fact of course is whether numerosity supports *certification of a 'class'.*

This issue was brushed-off by the appellate court by asserting that existance of an ascertainable class and a well-defined community of interest among class members, is sufficient, without passing on the essential issue of *numerosity.* To allow such a huge class action to survive in a major urban community without determining whether the ten (10) tenants who came forward for trial after years of pre-trial investigation, living in as many as ten of the 61 units, constitute a legal class, is to encourage mischief and abuse of the judicial machinery, and the sanction certification by way of sanction rather than evidentiary. Trustee's brief argued, at page 21, that "the purported discovery sanction of issue preclusion against appellant constituted a de facto default judgment under

the circumstances and unlawfully denied appellant constitutional due process of law".

The constitutional issue was raised in petitions to the Court of Appeal and to the California Supreme Court, to vacate and set-aside the certification, prior to commencement of trial, and renewed as a motion in limine, all on Federal constitutional grounds. (Fourteenth Amendment). The issue has been preserved an invites scrutiny. The litigation had no basis to be a class action, and a remand for trial on behalf of the estimated 10 tenancies affected would dissuade future abuse of this machinery.

4. Decision below recognizes no limit on multiple and successive, civil and criminal, individual and class litigation involving same facts and parties.

This 61 apartment property, adjacent to 10 units, bought and sold and operated as one 71 unit investment with same management and ownership by Schaefer, produced a lot of work for lawyers. The City of Los Angeles set Schaefer to jail for various violations, extracted fines on behalf of the City. Then the City sued again in a civil action for $2,500 civil fines for each citation issued and recovered $64,000 for 64 citations. The Class of 10, or whatever number, came along in 1982, following sale and a serious of criminal and civil cases, and called forth the same public safety and housing officers and inflamatory evidence to recover compensatory and punitive awards for the chosen few. Some tenants had individual actions, claiming not to be concerned about the "class" action, and then made demand for their share of any class recovery. Other tenants rejected being class members, but without formally opting-out, and sent them children into court as witnesses and individual independent class members.

Lower courts have expressed concern as to just how many 'bites of the apple' public or private plaintiffs can take, as to same defendant and circumstances. In *Juzwin v. Amtorg Trading Corp.,* (1989) 718 F. Supp. 1233, 1236, the court "abide by its ruling that the multiple awards of punitive damages for a single course of conduct violate fundamental fairness requirement of Due Process Clause". *Los Angeles Branch NAACP v. Los Angeles Unified School District,* (CA-9 1985) 750 F2d 731 held that res judicata bars maintenance of subsequent actions on any part of the original cause of action, even if that part was not litigated in the prior action.

The potential for mischief is apparent. The total lack of traditional protections of res judicata and collateral estoppel is missing.

The appellate court resolves this issue by asserting that the civil penalties case, People v. Schaefer, Superior Court case no. C378412 is of a nature that penalties are expressly made cumulative "to each other and to remedies or penalties available under all other laws". And finding no bar to recovery. But the fact that the *People v. Schaefer* case proceeds to judgment without being affected by the then-pending-trial Class Action deprives Schaefer of any opportunity at any point to have the civil penalties judge evaluate the *Gallego v. Schaefer* awards involving the same property, parties, time frame.

The constitutional issues inherent in this abuse were raised in motion in limine.

The various cases of-record and judicially noticed at trial of the instant cause are:

> Schaefer v. Gallego, Los Angeles Municipal Court No. 506047

Uceda v. Schaefer, Los Angeles Superior Court No. C330438
People v. Schaefer, Los Angeles Superior Court No. C378412
People v. Schaefer, Los Angeles Municipal Court No. 31175067
Camacho v. Schaefer, Los Angeles Superior Court No. C362133

And *Gallego v. Schaefer,* the instant case, involved residents whose interests were vindicated by the civil and criminal sanctions arising from the above litigations.

The inconsistent application of res judicata and collateral estoppel principles, throughout America, in addressing civil versus criminal, and individual versus class, and whether public actions on behalf of a community result in addressing rights of those individual community members arising out of same time, same premise, same defendant — need to be established in a reasonable manner in avoidance of duplicative litigation in all courts in the future.

5. Decision below commands this Court's exercise of its supervisory powers to curtail and eliminate abuses inherent in practices disclosed.

Our Founding Fathers exposed themselves to loss of property and freedom by petitioning a cause they believed was just and right; petitioner here having been threatened with additional contempt proceedings by Trustee of his estate, and having previously been subjected to five days federal incarceration for expressing a viewpoint to the State Court, needs this Court to determine the propriety of his assertion on behalf of the admitted residuary estate in excess of any contemplated obligations of Trustee to creditors.

Due process of law requires that defendant be relieved of any retaliatory consequences of his exercise of right to appeal. *Faux v. Jones,* W.D.N.Y. 1990, 728 F. Supp. 903.

Jury enpanelments are subect to various practices throughout America, and this Court must protect the due process and Sixth and Seventh Amendment rights by mandating compliance with areas as defined by law of the jurisdiction or disclosure as to any irregularities thereof; to do nothing invites challenge whenever the consequences of the case is substantial. The instant case, probably the largest tenant-landlord Class award in United States history, is such a case. Direction is needed.

National standards for punitive awards will be evaluated in *Pacific Mutual Life Insurance Co. v. Haslip,* this Court having granted certiorari to review this issue. (89-1279) Certiorari is not surprising, Justice Maddox in a dissent in that case, in the Alabama Supreme Court, observed that "In *Kelco,* all nine Justices expressed some concern with unrestrained punitive damage awards". And Justice Blackmun in *Kelco* noted that "there is some authority in our opinions for the view that the Due Process clause places outer limits on the size of a civil damages award". It would not be right to have *Pacific Mutual* and *Schaefer* within the grasp of America's highest Court, with justice being done only to the insurance company.

To allow "certification" without evidentiary support invites abuses that cannot avoid creating hypothetical class litigation where only handfull of litigants factually exist, Due Process is denied whenever such is tolerated.

Respectfully submitted,

MICHAEL SCHAEFER

APPENDIX A-1

No. B 021944

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

MARJORIE GALLEGO, et al.,
Plaintiffs and Appellants,

vs.

WILFORD D. WILLIS, as Trustee in Bankruptcy, etc.,
Defendant and Appellant.

(Super.Ct.No. CA 000720)

Following a jury trial, Wilford D. Willis, trustee of the bankruptcy estate of Michael Schaefer, the defendant below, appeals from a judgment in the amount of $1,850,538.42 entered in favor of plaintiffs, tenants in an apartment building owned by defendant. He contends:

"A. The punitive damages award must be stricken.

B. The purported discovery sanction of issue preclusion against appellant constituted a de facto default judgment under the circumstances and unlawfully denied appellant constitutional due processs of law.

C. The rent rebate award and the emotional distress awards are not supported by substantial evidence.

D. The certification of the purported class was erroneous as a matter of law.

E. The federal constitutional issue: The punitive damages award in this case violates appellant's federal constitutional rights."

Plaintiffs cross-appeal, seeking an award of attorneys' fees under the private attorney general doctrine, codified in section 1021.5 of the Code of Civil Procedure.

Schaefer, a member of the California Bar and a former San Diego city councilman, purchased a six-story, 61-unit apartment building on Berendo Street in Los Angeles in April 1977. During the period in question, from January 1 to August 26, 1981, its condition by all accounts was deplorable.

The building lacked an adequate system of fire protection. William Wakeland, a 23-year veteran of the Los Angeles Fire Department who inspected the building in 1981, testified at trial, "It was quite simply the most dangerous residential building I had ever been in." The fire doors were in extreme disrepair and in some cases obstructed by furniture, lighting was inadequate in many of the hallways, and there were no smoke detectors, and few, if any, operable fire extinguishers and fire hoses.

In late March 1981, the Los Angeles Fire Department formally ordered Schaefer to maintain a fire watch with trained security personnel because of the life threatening nature of the violations. Schaefer failed to comply with the order, and in August the police and fire departments instituted a 24-hour fire watch.

The building's electrical system also was dangerously defective. There were insufficient electrical outlets in the apartments, forcing tenants to make extensive use of cord wiring. The structure had defective light fixtures and switches, and open electrical boxes. All the circuits in the building were overloaded.

No adequate provision was made for the storage and removal of refuse. Garbage bins would remain full for three weeks or a month before pickup, so that typically the containers were overflowing. The common areas were also overwhelmed with rubbish and waste. The refuse created a stench and attracted vermin to the building; consequently, it was severely infested with mice, rats, and cockroaches.

The plumbing system was in such deteriorated condition that leaking waste water constituted a health risk. Tenants were forced to use buckets to contain leaking water. In August 1981 raw sewage had flowed for over a week out of a ground floor apartment into the hallway. The walls and ceilings of many units were deteriorating and collapsing.

In addition, the building frequently lacked hot water, and had no functioning heating system. The elevator rarely worked, and the stairwells were in dangerous disrepair, lacking guardrails, handrails, and vertical slats, and having loose steps.

The structure had neither effective external security doors nor security guards, and had become a haven for gang activity. It was the site of a murder in March 1981, and of the shooting of a 15-year-old tenant, Edward Gallego, in April 1981. Schaefer himself threatened to use gang members against his tenants. His resident electrician and plumber were reputed gang members.

In terms of code violations, the condition of the property was classified by Housing Inspector Michael Claessens as "one of the worst that I had looked at." Health Inspector John Buchanan concurred: "I would say it was probably the worst one I had ever seen."

Schaefer visited the premises between two and five times per week in 1981, and was aware of the condition of the building. He received violation notices from the fire, health, and building inspectors who inspected the building. His resident managers and tenants also informed him about the condition of the building. When tenants withheld rents or complained about conditions in the building, Schaefer threatened to shut down the building. He personally removed the furniture of a family withholding rent because of the uninhabitable condition of their unit.

Schaefer failed to remedy the dangerous and unhealthful conditions in the building, although he acknowledged that he had "unlimited amounts of money to put into the building to make repairs. There was no question as to availability of money. I have many other investments and money is not an issue." In the summer of 1981 he decided to close down or sell the building. He sold it in late August 1981.

Schaefer testified that he had purchased the 61-unit building and a 10-unit building, also on Berendo Street, in 1977 for $565,000. In 1980 he encumbered the property with a $243,000 loan, $109,000 of which he used as a down payment on a 68-unit residential building on Grand Avenue in Los Angeles. The remainder he used to pay off a bank loan. The purchase price of the Grand Avenue building was $900,000. He sold the Berendo properties in 1981 for $1,200,000. He sold the Grand Avenue building in 1983 for $1,250.000.

In January 1982, plaintiffs filed their complaint for nuisance, negligence, breach of the warranty of habitability and intentional infliction of emotional distress. The action was brought by Marjorie Gallego on behalf of herself and a class consisting of residents or occupants of

the building during the period January 1, 1981, through August 26, 1981. Schaefer cross-complained against the named class members for breach of contract, malicious mischief, and fraud.

On December 14, 1982, plaintiffs served their first set of interrogatories. Schaefer failed to adequately respond to questions regarding he maintenance of the premises, and any alleged destruction of the premises by tenants. In fact, he failed to identify any tenants, stating that "all records of residents were taken during ransacking of office immediately after termination of parties Quintana as resident manager-operators, subsequent records were surrendered to August 1, 1981 purchaser, and any records received back were surrendered to August 26, 1981 purchaser."

On February 2, 1983, plaintiffs filed a motion to compel further answers. The trial court granted plaintiffs' motion, ordered Schaefer to answer within 20 days and, "In any instance in which defendant contends that he does not have the information required and does not have access to it, defendant must state under oath why he does not have access to the information and what specific acts he has taken to secure the information."

Schaefer failed to comply, and plaintiffs filed a motion for sanctions, set for hearing April 12, 1983. Schaefer then moved for a protective order, which was set for hearing April 26, 1983. He failed to appear on April 12, 1983, and the court granted plaintiffs' motion, imposing the following sanction order:

"The court finds that defendant has willfully failed and refused to obey the court's order of February 25, 1983 and orders that the following facts shall be taken as established for the purpose of the action: [¶] 1. The class

of plaintiffs described in paragraph 4 of the complaint is ascertainable and manageable. [¶] 2. The named plaintiffs are members of the class, are suitable representatives of the class and are able fairly and adequately to represent the interests of the class. [¶] 3. Paragraph 5 of the complaint is true and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. [¶] 4. The action should proceed as a class action. [¶] 5. Defendant[']s building at 757 S. Berendo, Los Anageles was uninhabitable in 1981. [¶] 6. The members of the class of plaintiffs did not cause the uninhabitable condition of said building. CCP Section 2034(b)(2)." Plaintiffs then successfully moved for an order certifying the suit as a class action.

Schaefer stipulated at trial that he had failed to maintain the premises in a habitable state, requesting that the trial court take judicial notice of prior actions in which the premises had been found to be in violation of health and safety codes, and to be uninhabitable. Despite the sanction order, the trial court permitted Schaefer to present evidence regarding whether the class members caused the uninhabitable condition of the building, and submitted the isue to the jury.

After a five week trial, the jury found Schaefer liable on all theories. It found no contributory negligence on the part of plaintiffs, and awarded the class a 75 percent rent rebate, totaling $87,900. The jury made specific awards to certain individual plaintiffs for emotional distress, amounting to a total of $143,200. It awarded punitive damages to the class of $1,600,000.

Schaefer's motion for new trial or judgment notwithstanding the verdict was denied in all respects. Plaintiffs' motion for attorneys' fees was also denied.

Willis's first and fifth contentions lack merit. Even assuming the constitutional issue may properly be raised for the first time on appeal (see *Fleming v. Safeco Ins. Co.* (1984) 160 Cal.App.3d 31, 42-43), his position has been consistently rejected by our highest court (see *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 402, fn.2; *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 819) and, to the extent he relies upon the Eighth Amendment, was recently rejected by the United States Supreme Court. (*Kelco Disposal, Inc. v. Browning Ferris Industries of Vermont, Inc.* (June 26, 1989) ____ U.S. ____, [57 U.S.L. Week 4985].)

The amount of a punitive damage award is left to the discretion of the jury, and to the trial court upon motion for new trial. (*Moore v. American United Life Ins. Co.* (1984) 150 Cal.App.3d 610, 642.) In light of the reprehensible nature of Schaefer's conduct, and its profitability (see *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 790-791), the sum awarded is not so disproportionate to any reasonable amount warranted by the evidence as to shock the conscience and suggest passion and prejudice on the part of the jury. (*Weisenburg v. Molina* (1976) 58 Cal.App.3d 478, 490.)

This appeal is presented by Schaefer's trutee in bankruptcy. This fact should not be deemed to suggest Schaefer does not have sufficient funds to meet his obligations. On the contrary, it appears that the bulk of the trustee's efforts to date have been devoted to recovering the many assets which Schaefer has fraudulently transferred and sought to conceal from his creditors.[1] There exist ample

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[1]We hereby grant plaintiffs' motion, and take judicial notice pursuant to section 459 of the Evidence Code, of the following: (a) partial summary judgment in *Willis v. Schaefer*, No. C 88-0316-LM11 (U.S. Bankr. Ct. S.D.Cal., March 7, 1989); (b) amended plan of reorganiza-

funds to pay the award which even in the hyperbole of his brief allegedly merely "wipes out a major part of defendant Schaefer's net worth." It is true Schaefer himself submitted a financial statement which he had prepared in March 1986, which purported to show assets of only $2.5 million and a net worth of $1.1 million. However, by comparing it with a financial statement he had prepared in August 1981, which listed assets exceeding $7 million and a net worth of almost $5 million, plaintiffs were able to expose discrepancies in the 1986 statement. The jury could, and undoubtedly did, disbelieve the self-serving 1986 document. (*Moore v. American United Life Insurance Co., supra,* 150 Cal.App.3d at p. 641.)

Willis's second contention also lacks merit. The effect of the sanction order was limited both by Schaefer's subsequent stipulation regarding the condition of the premises, and the trial court's allowance of proof regarding whether the tenants themselves had caused the damage. With regard to the class issue, the sanction order was authorized by former section 2034, subdivision (b), of the Code of Civil Procedure. (The relevant provisions are now found in Code Civ. Proc., §§ 2023, 2030, subd. (1).) Its terms appear to be both just and specifically related to the claim at issue in light of Schaefer's refusal to respond adequately to interrogatories designed to provide information necessary to the certification of the class. (See *Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 228.) Schaefer's belated motion for a protective order did not insulate him from sanctions for his previous failure to comply.

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tion proposed by trustee in In re *Schaefer,* No. 87-05174-LM11 (March 17, 1989); and (c) order confirming amended plan of reorganization proposed by trustee in In re *Schaefer,* No. 87-05174-LM11 (U.S. Bankr. Ct. S.D.Cal., March 30, 1989). Except as so granted, the motion is denied.

Willis's third contention is unavailing. Schaefer testified to a monthly rent roll in 1981 of approximately $14,670. That figure yields a total potential rent for the eight-month period of $117,360. Although the jury heard evidence that some of the units were not held by rent-paying tenants during the period, Schaefer can hardly complain of the finding that $117,200 rent was paid when his failure to maintain complete receipts and records precluded a reconstruction of amounts collected. (See *Shelly v. Hansen* (1966) 244 Cal.App.2d 210, 216-217.) Under the circumstances, the jury's finding of $117,200 in rent paid must be sustained.

The contention that Schaefer did not receive the rents for August because it was collected by a purported purchaser of the building, Suck Jue Bae, is unpersuasive. Schaefer authorized the payment of rent to Bae, owned the building when the rents were collected, and retained a $30,000 payment from Bae in August after the property was in fact purchased by Jay De Miranda.

The $20,000 award for the emotional distress suffered by Edward Gallego, a 15-year-old tenant, is supported by the testimony of his mother and a third tenant, who related their observations of his condition. Contrary to appellant's contention, Gallego's failure to testify does not preclude the recovery. (See *Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 896.) The jury could find, based on the entire evidentiary record, including the reasonable inferences which can be drawn from it, that Edward Gallego suffered substantial emotional distress. (See *Tan Jay Internat., Ltd. v. Canadian Indemnity Co.* (1988) 198 Cal.App.3d 695, 708.)

Willis's fourth contention is equally unavailing. A class action is properly certifiable under section 382 of the Code of Civil Procedure when a plaintiff establishes the

existence of an ascertainable class and a well-defined community of interest among the class members. (*Rich v. Schwab* (1984) 162 Cal.App.3d 739, 744.) Our Supreme Court has upheld class certification where issues similar to plaintiffs' were presented. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 478, purchasers of real property alleged its developer had failed to plan adequately for necessities such as adequate water and sewage removal.)

City of San Jose v. Superior Court (1974) 12 Cal.3d 447, relied upon by Willis, is distinguishable. There the court found on the facts that a sufficient community of interest did not exist because a parcel by parcel determination would be required to show liability in inverse condemnation and nuisance for airplane overflights. Here, while an individual determination of damages was required, the question of habitability, and accordingly of liability, was common to the entire class.

Even assuming those issues raised by Willis for the first time in his reply brief, i.e., res judicata and jury selection, are properly before this court (9 Witkin, Cal. Procedure (3d ed. 1983) Appeal, § 496, pp. 484-485), they fail. Willis asserts that People v. Schaefer (L.A. Super. Ct., No. C378412), which resulted in the assessment of civil penalties for engaging in unfair competition (Bus. & Prof. Code, § 17200) against Schaefer, based upon his business practice of maintaining the subject property and two others in substandard condition, bars a subsequent award of punitive damages. However, the statutory penalties provided for unfair competition are expressly made cumulative "to each other and to the remedies or penalties available under all other laws of this state." (Bus. & Prof. Code, § 17205.) Consequently, they do not bar the present recovery.

Willis failed to raise the jury selection issue in the trial court (see *People v. Jones* (1973) 9 Cal.3d 546, 556, fn. 7), and to show either the exclusion from jury service of a cognizable, distinctive group, or the under-representation of such a group. In addition, his position that for purposes of cross-section analysis, "community" is defined as an area extending 20 miles from the courthouse was recently rejected by our Supreme Court in *Williams v. Superior Court* (Oct. 31, 1989, S002131) _____ Cal.3d _____.

Plaintiffs' cross-appeal is also without merit. We agree with the trial court that since the present action was brought to advance plaintiffs' personal economic interests (see *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 167), and the judgment involves only the application of existing law to a particular apartment building, section 1021.5 of the Code of Civil Procedure does not compel an award of attorneys' fees.[2]

In light of the magnitude of damages recovered and the relatively few members of the class that have been identified, an award of fair and reasonable attorneys' fees from the entire fund (*Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 272) will not create a financial burden disproportionate to the known and unknown plaintiffs'

[2]"Upon motion a court may award attorney's fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities and no claim shall be required to be filed therefor." (Code Civ. Proc., § 1021.5.)

stake in the proceeding. (*California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 515.) While, commendably, plaintiffs' counsel have stressed their desire not to thus diminish the recovery, they are certainly ethically entitled so to do and the "Notice of Class Action" they provided the members of the class adequately alerted these parties that such eventuality was possible.[3]

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[3]This notice provided: "Counsel for plaintiffs will apply to the court for an award of attorneys' fees, costs and expenses to be paid by defendants. The amount of attorneys' fees for which they will apply to the Court will be determined by multiplying the number of attorney hours spent on the case by each attorney's billing rate. The Court will also be asked to approve costs and expenses actually incurred in the case. Except to the extent the Court orders such fees and expenses to be paid by the defendants, counsel for plaintiffs may request that the amount approved by the Court be paid out of the recovery by members of the class. In the event such an award is made payable by the defendants, counsel for plaintiff may ask the Court to allow withholding of the award of fees and expenses from recovery by class members, subject to reimbursement if and when such amounts are recovered from the defendant."

The judgment is affirmed. The parties shall bear their own appellate costs.

NOT TO BE PUBLISHED.

_____, J.
GATES

We concur:

_____, ACTING P.J.
COMPTON

_____, J.
FUKUTO

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Second Appellate District,
Division Two,
No. B021944

S013509

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

MARJORIE GALLEGO Et Al., *Appellants,*

vs.

WILFORD D. WILLIS, As Trustee In Bankruptcy, Etc., *Appellant*

Appellant's petition for review DENIED.

LUCAS
Chief Justice

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 2 DATE: 12/13/89

GIBSON, DUNN & CRUTCHER
JAMES P. CLARKE
2029 Century Park East
Suite 4000
Los Angeles, CA 90067

RE: GALLEGO, MARJORIE, Et Al.
vs.
SCHAEFER, MICHAEL
2 Civil B021944
Los Angeles No. CA 000 720

THE COURT:

Petition for rehearing denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

MARJORIE GALLEGO, etc., et al.,

vs.

MICHAEL SCHAEFER, etc., et al.,

MOTION OF PLAINTIFFS FOR SANCTIONS FOR DISOBEDIENCE OF PRIOR COURT ORDER AND FOR AN AWARD OF FEES AND EXPENSES

The matter comes on for hearing, there being no appearance by the defendant, the court now rules as follows:

The court finds that defendant has willfully failed and refused to obey the court's order of February 25, 1983 and orders that the following facts shall be taken as established for the purpose of the action:

1. The class of plaintiffs described in paragraph 4 of the complaint is ascertainable and manageable.

2. The named plaintiffs are members of the class, are suitable representatives of the class and are able fairly and adequately to represent the interests of the class.

3. Paragraph 5 of the complaint is true and a class action is superior other available methods for the fair and efficient adjudication of the controversy.

4. The action should proceed as a class action.

5. Defendants building at 757 S. Berendo, Los Angeles was uninhabitable in 1981.

6. The members of the class of plaintiffs did not cause the uninhabitable condition of said building. CCP Section 2034(b)(2).

CA 000 720

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: April 24, 1986

Honorable Max F. Deutz, Judge; J. Gallaher, Court Attendant; G. Hassen, Deputy Clerk; R. Colby, Reporter.

MARJORIE GALLEGE, et al

vs.

MICHAEL SCHAEFER

12. Do you find that the unlawful acts and/or omissions of the Defendant were a legal cause of emotional distress to the Plaintiffs? Write the answer "Yes" or "No" after the name of each of the plaintiffs listed below:

Answer:

Leroy Jones	Yes
Leonard Tupper	Yes
Fructuoso Prado Family	Yes
Jose Prado Family	Yes
Marjorie Gallego and Daughters	Yes
Eddie Gallego	Yes
Suzanne Norman and Daughter	Yes
Ana Uceda and Sons Alfredo and Edwin	Yes
Frank Uceda	Yes
Camacho children	Yes

Answer Question No. 12A regardless of your answers to the previous questions.

12a. To which plaintiffs, if any, do you find that Defendant Schaefer intentionally or with reckless disregard, legally caused severe emotional distress? Write the an-

swer "Yes" or "No" after the name of each of the Plaintiffs listed below.

Answer:

Leroy Jones	No
Leonard Tupper	No
Fructuoso Prado Family	Yes
Jose Prado Family	No
Marjorie Gallego and daughters	Yes
Eddie Gallego	Yes
Suzanne Norman and Daughter	Yes
Ana Uceda and Sons Alfredo and Edwin	Yes
Frank Uceda	No
Camacho Children	Yes

With respect to each Plaintiff, if any, for whom you have answered "Yes" to either Question No. 12 or Question No. 12-a or both, answer Question No. 13.

If your answers to Question No. 12 and 12A are "no" for all plaintiffs, then proceed directly to Question No. 14.

13. What amount do you find sufficient to compensate the Plaintiffs for such emotional distress?

Write your answer after the name of each Plaintiff for whom you have answered "yes" to either Question No. 12 or Question No. 12-a or both.

Answer:

Leroy Jones	$500.00
Leonard Tupper	$400.00
Fructuoso Prado Family	$11,700.00
Jose Prado Family	$600.00
Marjorie Gallego and daughters	$19,000.00
Eddie Gallego	$20,000.00
Suzanne Norman and Daughter	$23,500.00
Ana Uceda and Sons Alfredo and Edwin	$31,500.00
Camacho Children	$35,300.00
Frank Uceda	$700.00

Answer Question No. 14 regardless of your answer(s) to the preceding questions.

14. Were the following plaintiffs negligent between January 1, 1981 and August 27, 1981?

Write the answer "Yes" or "No" after the name of each plaintiff listed below.

Answer:

Marjorie Gallego	No
Eddie Gallego	No
Ana Uceda	No
Frank Uceda.....	No

With respect to each plaintiff for whom your answer to Question No. 14 is "yes", if any, answer Question No. 15. If your answer to Question No. 14 is no for all plaintiffs, then proceed directly to sign and return these interrogatories.

Dated: April 24, 1986 James Turner, Foreman

The jury is polled. On the cross-complaints re Gallego and Price and on the emotional distress counts of the plaintiffs the jury was polled on numerous individual questions and their answers are contained in the notes of the official court reporter.

Trial resumes on case continued from April 24, 1986 with all counsel and jurors present as before.

At 9:00 AM all jurors are present and have resumed their deliberations. At 10 AM the jury sends a note to the Court and at 10:15 AM the Court answers the question in said note in open court. The jury note is filed. At 10:16 AM the jury resumes their deliberations. At 10:50 AM the jury returns into the courtroom with the following answer to a special interrogatory:

(Title of Court and Cause)

We, the jury in the above entitled case, find the following answers to the Questions submitted to us:

17. What amount, if any, should Defendant Shaefer be required to pay to the Plaintiff Class as punitive damages?

Answer: $1,600,000.00.

Dated: April 25, 1989 James Turner, Foreman

The jury is polled and ten jurors answer "yes" and James Turner and Luzviminda F. Rimando answer "no". The jury is discharged. Special Interrogatories, judgment, and instructions given and refused are filed.